



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

ON THE 20th OF AUGUST, 2024

WRIT APPEAL No. 601 of 2007

STATE OF M.P. AND OTHERS

Versus

BALU SINGH DECEASED THROUGH LRS. VIKRAM SINGH

Appearance:

Shri Sudeep Bhargava learned Dy. Advocate General for the appellants / State.

Shri Ashok Shankar Kutumbale, learned Senior Advocate along with Shri Baldeep Singh Gandhi, learned counsel for the respondents / LRs.

ORDER

Per: Justice Vivek Rusia

State of Madhya Pradesh and others have filed this writ appeal against the order dated 26.10.2006 passed by Writ Court, whereby Writ Petition No.1952 of 2000 has been allowed by setting aside the order dated 13.07.1998 passed by the Secretary, Revenue Department.

02. Facts of the case in short are as follows:

2.1. Late Basantibai was the owner of land bearing survey No.46/1/1 area 2.404 hectare, 317/1 area 2.571 hectare, 318/1 area 0.376 hectare and 339/1 area 0.356 hectare total area 5.507 hectare situated at Nalkheda, Ujjain (M.P.). The competent authority registered a case No.276 x 6/76-77 under the provisions of the Urban Land Ceiling and Regulation Act, 1976 (hereinafter referred to as "ULC Act") against Basantibai in respect of the aforesaid land. Vide order dated 17.01.1979,



the aforesaid total of 5.507 hectares of land was declared as surplus land. According to Late Basantibai, she remained in possession and filed an objection under Section 20 of the ULC Act before the competent authority seeking exemption of the aforesaid land from the ceiling proceedings. According to the late Basantibai, the said land had been agricultural land and it would not be covered under the definition of urban vacant land as defined under Section 2(q) of the ULC Act hence, the aforesaid land has wrongly been declared as surplus land. Late Basantibai executed a Will dated 04.04.1983 in favour of Balusingh (writ petitioner) bequeathing the aforesaid land. After some time Basantibai expired.

2.2. Balusingh applied on 26.05.1989 claiming himself to be an owner of the land seeking the release of land bearing survey No.46/1/1 area 2.404 hectare, 339/1 area 0.356 hectare, total area 2.760 hectare as it was allotted for botanical garden in the master plan and same is exempted under the provisions of Section 2(q) of ULC Act. The writ petitioner also sought compensation of the land bearing survey No.317/1 area 2.947 hectares occupied for the construction of a road and survey No.318/1 area 1.900 hectares was allotted to the Oil and Natural Gas Commission for which the compensation of Rs.23,92,240/- was deposited before the respondent No.2. The writ petitioner Balusingh claimed compensation at the same rate from the respondent / State (therein). The competent authority in the exercise of power under Section 45 of the ULC Act exempted the land bearing survey No.46/1/1 area 2.404 hectares in favour of Balusingh which was reserved for the botanical garden.

2.3. After four years, respondent No.4 in the exercise of power under Section 34 of the ULC Act vide order dated 25.08.1998, set aside the order dated 29.07.1994 passed by the competent authority. Being



aggrieved by the aforesaid order, Balusingh filed the writ petition before this Court.

2.4. After issuance of notice, the Tehsildar issued a notice under Section 248 of M.P. Land Revenue Code, 1959 (hereinafter referred to as “MPLRC”) to dispossess the petitioner from survey No.46/1/1. The petitioner challenged the said notice by way of amendment. The State of M.P. filed the return to the writ petition by submitting that the competent authority in the exercise of power under Section 45 of the ULC Act can only make a correction of a clerical error in the order hence, the order dated 29.07.1994 passed by the competent authority cannot be said to be a correctional error. It is further submitted that Vide the aforesaid order, the competent authority has virtually recalled or reviewed the earlier order dated 17.01.1979 which had attained finality as no appeal was filed by Basantibai or Balusing. The possession of the land had been taken from 07.06.1980, therefore, power under Section 45 of the ULC Act has wrongly been exercised. It is further submitted that by exercising the power of revision, the State Government can set aside the order passed by the competent authority.

2.6. The petitioner filed the rejoinder. Vide order dated 26.10.2006, the Writ Court allowed the writ petition by setting aside the order dated 13.07.1998. The petitioner has been declared in occupation of the land bearing survey No.46/1/1 area 2.404 hectares by observing that no document has been filed by the State Government to show that the possession has been taken over. Hence, this writ appeal before this Court.

03. We have heard the learned counsel for the parties at length.

04. Shri Bhargava, learned Dy. Advocate General for the appellant / State submits that under Section 45 of the ULC Act, only the clerical or arithmetical mistakes in the order passed by any officer or authority or



errors arising therein from any accidental slip or omission are liable to be corrected at any time by such officer or authority either on application or its own motion. But in the present case, the competent authority under the ULC Act has reviewed the order dated 17.01.1979 by releasing the land bearing survey No.46/1/1 area 2.404 hectares hence, the State Government rightly set aside the said order in exercise of revisional power under Section 34 of the ULC Act and there is no limitation for exercising such power.

05. Learned Dy. Advocate General places reliance on a judgment passed by the Full Bench of Allahabad High Court in the case of the *State of U.P. and another V/s Radha Raman Agrawal and another [1987 SCC OnLine All 159]* in which it has been held that the vacant land has thus been defined to include all land not being mainly used for agriculture in an urban agglomeration. He has also placed reliance on a judgment passed by the Hon'ble Apex Court in the case of *Kewal Court Private Limited and another V/s State of West Bengal and others [(2023) 10 Supreme Court Cases 734]* in which it has been held that once the 'vacant land' is notified as excess land, the competent authority under sub-section (3) would issue declaration whereupon the 'vacant land' shall be deemed to have vested absolutely in the State Government free from all encumbrances.

06. Shri Kutumbale, learned senior counsel appearing for the respondent contends that the State Government has wrongly exercised the revisional power after the period of 4 years. The Full Bench of this Court in the case of *Ushadevi wd/o Shankarrao and others V/s State of M.P. and others [1990 M.P.L.J. 353]* has held that power of revision *suo motu* contemplated under Section 42 of the M.P. Ceiling and Agricultural Holdings Act can be, and has to be, exercised within a reasonable time. He has also placed reliance on a judgment passed by



the Hon'ble Apex Court in case of *Vinayak Kashinath Shilkar V/s Deputy Collector and Competent Authority and others [(2012) 4 Supreme Court Cases 718]* in which it has been held that the appellant remaining in possession of land and at no point of time he was dispossessed, therefore, after abolition of ULC Act, the proceedings stood automatically abated and the possession will continue with the land owner.

Appreciation and conclusion:

07. In this case, certain dates and events are very important for deciding this matter. The State Government while filing the reply in the Writ Petition and as well as in this writ appeal has missed them. The competent authority passed an order dated 17.01.1979 declaring the land surplus under Section 10 of the ULC Act. After issuance of the notification as the excess land, such land shall be deemed to have vested absolute to the State Government free from all encumbrance. As per the reply filed by the State Government, the possession of the entire land was taken in the year 1980. After vesting with the State Government, Basantibai had no right and title on the land to execute the Will of the said land in favour of Balusingh on 04.04.1983. Basantibai did not challenge the order dated 17.01.1979 during her lifetime and that order had attained finality, the land stood vested with the State Government, therefore, the Will dated 04.04.1983 cannot be given effect by transferring the right and title to Balusingh.

08. During the pendency of this petition, Balusingh has also expired and in his place Vikramsingh claimed himself to be the legal heir by virtue of a registered Will dated 24.02.2010 executed by Balusingh. Since Balusingh had no right and title on the land, therefore, such right cannot be transferred to Vikramsingh by virtue of Will. Even otherwise, as rightly pointed out by Shri Bhargava, learned Dy. A.G. for



the appellant / State that under Section 45 of the ULC Act only the clerical or arithmetical mistakes can be corrected by the competent authority, but in the present case, the competent authority has passed an order dated 29.07.1994 i.e. after 15 years on an application filed by Balusingh that too after the death of Basantibai which is beyond the purview of Section 45 of the ULC Act, therefore, the State Government has rightly exercised the power of revision and set aside the order dated 29.07.1994.

09. The Apex Court in the case of *Kapila Ben Ambalal Patel V/s The State of Gujarat [(2021) 12 SCC 95]* has held that it is difficult to take physical possession of the land under compulsory acquisition, the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession. Paragraph No.26 of the judgment is reproduced below:-

26. The respondents had additionally relied on the decision of this Court in *Larsen & Toubro Ltd. (supra)*, wherein the Court adverted to the exposition in *Balwant Narayan Bhagde v. M.D. Bhagwat, Balmokand Khatri Educational and Industrial Trust v. State of Punjab and Tamil Nadu Housing Board v. A. Viswam (Dead) by LRs. 22* regarding the settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. Further, that the normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. Reliance is also placed on paragraphs 14 to 16 of *Bhaskar Jyoti Sarma (supra)*. However, it is not necessary for us to dilate on these aspects having agreed with the conclusion recorded by the Division Bench of the High Court that the writ petition filed in the year 2001 by the appellants with limited relief of questioning the Possession Panchnama dated 20.3.1986, suffered from laches. The Division Bench of the High Court noted that the learned single Judge completely glossed over this 20 (1976) 1 SCC 700 (paragraph 28) 21 (1996) 4 SCC 212 (paragraph 4) 22 (1996) 8 SCC 259 (paragraph 9) crucial aspect of the matter, and we find no reason to depart from that conclusion.”

[Emphasis Supplied]



10. In view of the above, this Writ Appeal is **allowed** and the order dated 26.10.2006 passed in Writ Petition No.1952 of 2000 is hereby set aside and the order dated 13.07.1998 passed by the Secretary, Revenue Department is restored.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

Divyansh